

1  
2  
3  
4 BEFORE THE INSURANCE COMMISSIONER  
5 OF THE STATE OF WASHINGTON

6 In the Matter of

No. G02-45

7 THE APPLICATION REGARDING  
8 THE CONVERSION AND  
9 ACQUISITION OF CONTROL OF  
10 PREMIERA BLUE CROSS AND  
ITS AFFILIATES

PRE-FILED RESPONSIVE  
TESTIMONY OF RICHARD A.  
ASHLEY

11 I, Richard A. Ashley, do hereby declare that the following facts are personally  
12 known to me and, if called upon to do so, I would testify to them.

13 1. In his pre-filed testimony on page 17 at lines 3 and 21, Kent Marquardt  
14 indicates that PricewaterhouseCoopers, LLP (PwC) stated "that it would 'not be  
15 unreasonable' (in other words reasonable)" to rely upon the Ernst and Young opinions.  
16 This is not an accurate characterization of the meaning of the phrase "not unreasonable"  
17 in the context intended by PwC. PwC does not use the phrase "not unreasonable" to  
18 mean "reasonable". The purpose for using the phrase "not unreasonable" is intended to  
19 reflect the fact that PwC has not performed the same level of analysis as Premiera and  
20 its outside tax advisors in evaluating the tax risks associated with the conversion  
21 transaction. Nor has PwC been provided with the level of information that would  
22 ordinarily be required for issuance of an opinion or formation of a conclusion with  
23 respect to a particular tax matter as indicated in PwC's report (Exhibit "S-12"). Based  
24 on the analysis PwC performed, however, no matters came to PwC's attention that

1 would cause PwC to conclude that Premera's reliance on the Ernst & Young tax  
2 opinions, or the manner in which Premera achieved comfort with respect to certain tax  
3 matters, is "unreasonable". If PwC had access to the same information and performed  
4 the same level of analysis as Premera and Ernst & Young, it is possible that a different  
5 conclusion would have been reached. It is for this reason that PwC uses the phrase "not  
6 unreasonable" in its report (Exhibit "S-12").

7         2. In his pre-filed testimony on page 18 at lines 6 through 8, Mr. Marquardt  
8 makes the following statement regarding the impact of an ownership change under  
9 Internal Revenue Code Section 382: "PricewaterhouseCoopers has looked at this issue  
10 and agrees with the assessment that it should not have a material tax impact." This is  
11 not an accurate characterization of PwC's position.

12         3. Premera provided PwC with an analysis, based on a set of assumptions, of  
13 the tax impact in future periods if certain tax attributes, including net operating loss  
14 carryovers and AMT credits, were limited as a result of changes in the stock ownership  
15 in Premera subsequent to the conversion transaction. In addition, Premera verbally  
16 indicated to representatives of PwC that the company was considering placing certain  
17 restrictions on the proposed foundation shareholder's ability to sell the New Premera  
18 stock. PwC indicated in its report (Exhibit "S-12" pages 17 - 18) that "Based on  
19 projections provided by Premera, it does not appear that an "ownership change" under  
20 Section 382, by itself, would cause Premera to have tax attributes expire unutilized.  
21 The timing of the utilization of the tax attributes would be impacted, however, the  
22 effect may not be material." I have two comments regarding this issue. First, PwC's  
23 statement that "...the effect **may not** be material..." is not consistent with Mr.  
24 Marquardt's statement that PwC agreed, "...it **should not** have a material impact."

1 (Emphasis added) Second, the term "material" in this context should be interpreted in  
2 relation to any restrictions that may be imposed on the proposed foundation shareholder  
3 with respect to its ability to sell the New Premera stock. In other words, given the  
4 significance of the limitation, it did not appear that any restrictions on the proposed  
5 foundation shareholder would be warranted. PwC is not expressing any view with  
6 respect to whether the possible limitation of certain tax attributes would be material for  
7 any other purpose.

8 I declare under penalty of perjury under the laws of the State of Washington  
9 that the foregoing is true and correct.

10 Dated April 14, 2004 at Philadelphia, Pennsylvania.

11  
12   
13 RICHARD A. ASHLEY  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24